

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/11/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-009304

FILED: _____

MIRAMONTE APARTMENTS

J MARK HELDENBRAND

v.

DEBORAH VALERIE CATANIA, et al.

DEBORAH VALERIE CATANIA
4353 W KIMBERLY WAY
GLENDALE AZ 85308-0000

MICHAEL V CATANIA
4353 W KIMBERLY WAY
GLENDALE AZ 85308-0000
REMAND DESK CV-CCC
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

In the case at hand, Appellant comes before this court to appeal the Scottsdale Justice Court's decision to deny Appellant's motion to set aside a default judgment. The default judgment stemmed from a breach of contract and special detainer;

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Appellees contend that Appellant rented an apartment then failed to pay rent for the five months remaining on the contract.

Appellant maintains that her identity was stolen and that she never rented the apartment in question. Appellant further contends that she has been a stay-at-home mom and housewife at her residence on Kimberly Way for several years.

A careful review of the record shows that the lower court erred in its decision to set aside the default judgment. Rule 60(c)(6) of the Arizona Rules of Civil Procedure states that a party may be relieved from a final judgment for "any other reason justifying relief from the operation of the judgment." The four reasons listed below clearly justify relief from the default judgment. It is also worth noting that the judgment may have been void *ab initio* due to lack of proper service of process, but this issue was not raised by either party.

When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.² If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

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appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

Appellant presented evidence that: 1) Alexander Marki's Michigan driver's license was used to pre-view the apartment - Appellant's name does not appear; 2) Appellant's signature does not appear on the rental agreement; 3) the addendum to rental agreement has one occupant listed - Appellant has a husband and a child; and 4) Appellant's bank records and her child's birth certificate, both of which are dated before the rental agreement was allegedly signed, list Appellant's 4353 W. Kimberly Way address. Thus, no substantial evidence exists to support the decision of the lower court

IT IS THEREFORE ORDERED reversing the decision of the Scottsdale Justice Court, with instructions to vacate the default judgment against Appellant.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all further and future proceedings.

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

⁷ Id. at 553, 633 P.2d at 362.